

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**CHEMTREAT, INC.** )  
vs. )  
Plaintiff/Counterclaim Defendant, )  
vs. )  
**CERTAIN UNDERWRITERS AT** ) Civil No. 3:19-cv-00063-HML  
**LLOYD'S OF LONDON SUBSCRIBING** )  
**TO POLICY NO. B0509FINPS1700245** )  
Defendant/ Counterclaim Plaintiff. )

**MEMORANDUM IN SUPPORT OF UNDERWRITERS'  
MOTION TO STRIKE CHEMTREAT'S NOTICE OF OBJECTION**

Paragraphs 17-18 of the Court's Initial Scheduling Order (Dkt. 7) sets forth a procedure for resolving discovery disputes “[i]n the unusual event that, after a good faith effort, counsel are unable to resolve the dispute and the resolution of the dispute requires Court intervention.” Dkt. 7, ¶ 17. Pursuant to this procedure, the aggrieved party must file a Notice of Objection stating the nature of the discovery dispute, after which the parties shall file a Joint Statement detailing and itemizing the discovery disputes at issue. If necessary, a hearing will then be held on the discovery dispute.

Paragraph 19 expressly states: “Any discovery-related issues not raised pursuant to the above procedures and within five days before the discovery cutoff are deemed waived.” *Id.*, at ¶ 19 (emphasis added). Discovery closed on August 23, 2019. *See id.*, ¶ 15. ChemTreat filed its Notice of Objection pursuant to Paragraph 17 of the Court's Initial Scheduling Order on August 30, 2019—seven days *after* the close of discovery. Because ChemTreat did not raise the discovery dispute outlined in its Notice of Objection pursuant to the procedure outlined in

Paragraphs 17 and 18 of the Court’s Initial Scheduling Order on or before August 19—five days before the close of discovery—its Notice of Objection is untimely, and ChemTreat’s arguments are deemed waived.

This missed deadline is not inconsequential as the parties are due to file summary judgment motions on September 23, 2019—less than three weeks from now. Pursuant to the procedures outlined in Paragraphs 17 and 18 of the Court’s Initial Scheduling Order, the parties Joint Statement would not be due until September 13, 2019, after which a hearing would be required. As such, if ChemTreat’s untimely Notice of Objection stands, it is almost certain that these issues would remain unresolved by the time summary judgment is briefed. It would be unreasonable to read the Court’s Initial Scheduling Order in a way that allows for unresolved discovery disputes at the time of summary judgment.

Underwriters have raised this issue with ChemTreat, and ChemTreat disagrees that the Notice of Objection is untimely. Underwriters therefore respectfully move this Court to strike ChemTreat’s Notice of Objection on the grounds that it was not timely filed within five days before the close of discovery as required by Paragraph 19 of the Court’s Initial Scheduling Order, and therefore the arguments raised therein are deemed waived.

Date: September 5, 2019

Respectfully submitted,

**DEFENDANT CERTAIN  
UNDERWRITERS AT LLOYD'S OF  
LONDON SUBSCRIBING TO POLICY  
NO. B0509FINPS1700245**

By Counsel

/s/ Leland H. Jones IV  
Leland H. Jones IV (VSB No. 78643)  
WILEY REIN LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
Tel: (202) 719-7000  
Fax: (202) 719-7049  
Email: lhjones@wileyrein.com

**Counsel for Defendant Certain  
Underwriters at Lloyd's of London  
Subscribing to Policy No.  
B0509FINPS1700245**

## CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record, including:

Constantinos Panagopoulos (#33356)  
Andrew Petrie (admitted *pro hac vice*)  
BALLARD SPAHR LLP  
1909 K Street, NW - 121h Floor  
Washington, DC 20006-1157  
Telephone: 202-661-2200  
Facsimile: 202-661-2299  
[cgp@ballardspahr.com](mailto:cgp@ballardspahr.com)  
[petriea@ballardspahr.com](mailto:petriea@ballardspahr.com)

Counsel for Plaintiff ChemTreat, Inc.

/s/ Leland H. Jones IV  
Leland H. Jones IV (VSB No. 78643)  
WILEY REIN LLP  
1776 K Street, N.W.  
Washington, D.C. 20006  
Tel: (202) 719-7000  
Fax: (202) 719-7049  
Email: [lhjones@wileyrein.com](mailto:lhjones@wileyrein.com)

**Counsel for Defendant Certain Underwriters at Lloyd's of London Subscribing to Policy No. B0509FINPS1700245**